

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**FAMILY SPINAL HEALTH &  
REHABILITATION CENTER, INC.  
HEALTH GROUP d/b/a  
PRECISION HEALTH GROUP,**

**Plaintiff,**

**vs.**

**AFFORDABLE MANAGEMENT  
& CONSULTING, INC., et al.,**

**Defendants.**

**Case no. 4:17cv00975 PLC**

**ORDER OF DISMISSAL**

This matter is before the Court on Plaintiff's notice or motion of dismissal without prejudice with regard to the ten John Doe Defendants and with prejudice with respect to the other eleven Defendants [ECF No. 34]. Plaintiff states that each party shall bear its own costs and attorneys' fees. Plaintiff pursues the dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i), which allows a plaintiff to voluntarily dismiss an action "before the opposing party serves either an answer or a motion for summary judgment."

On December 3, 2016, Plaintiff filed in the Circuit Court of St. Charles County, Missouri, a "Class Action Junk-Fax Petition" requesting relief for Defendants' alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*<sup>1</sup> In the original petition, Plaintiff named as Defendants seven identified individuals and business entities, as well as ten John Doe

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<sup>1</sup> See Family Spinal Health & Rehab. Ctr., Inc. d/b/a Precision Health Grp. v. Affordable Mgmt. & Consulting Co., No. 1611-CC01168.

Defendants.<sup>2</sup> After removal of the case to this Court, and at Plaintiff's request, the Court dismissed without prejudice Plaintiff's cause of action against the ten John Doe Defendants.<sup>3</sup>

Plaintiff subsequently filed an amended complaint.<sup>4</sup> In the amended complaint, Plaintiff named as Defendants the seven identified individuals and business entities named in the original petition, as well as four additional business entities and ten John Doe Defendants. Id.

The docket sheets for both the removed lawsuit and the original state court case reveal no answer or summary judgment motion filed by any Defendant. Additionally, no discovery or other pretrial proceedings, including service of summons on the defendants added by the amended complaint, certification of a plaintiff class, and a Rule 16 conference, occurred before Plaintiff filed its recent dismissal notice or motion. Moreover, in requesting extensions of deadlines, the parties reported that they had settled the case.<sup>5</sup>

The Court finds Plaintiff's proposed dismissal under Rule 41(a)(1)(A)(i) does not result in either a waste of judicial time and effort or prejudice to any Defendant because (1) the case is properly before the Court under the Court's federal question jurisdiction and forum-shopping is not at issue, (2) Plaintiff proposes dismissal at an early stage of the proceedings, (3) Plaintiff's proposed dismissal includes a dismissal with prejudice of its claim against the eleven identified individual and business entity Defendants and provides for payment of the parties' costs and attorneys' fees, and (4) the dismissal appears consistent with settlement of the case. See, e.g., Blaes v. Johnson & Johnson, 858 F.3d 408, 516 (8<sup>th</sup> Cir. 2017) (court should address payment of costs and expenses when dismissing a case on the plaintiff's motion); Thatcher v. Hanover Ins.

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<sup>2</sup> See Pl.'s "class action junk-fax pet'n," filed Mar. 17, 2017 [ECF No. 8].

<sup>3</sup> See Order of Partial Dismissal, filed Mar. 23, 2017 [ECF No. 16].

<sup>4</sup> Pl.'s first am. class action compl., filed Apr. 4, 2017 [ECF No. 24].


<sup>5</sup> See, e.g., joint mot. extend deadlines, filed June 14, 2017 [ECF No. 32].

Group, 659 F.3d 1212 (8<sup>th</sup> Cir. 2011) (addressing a voluntary dismissal of a putative class action under Rule 41(a)(2)). Accordingly, after careful consideration,

**IT IS HEREBY ORDERED** that Plaintiff's notice or motion of dismissal [ECF No. 34] is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's cause of action against the ten John Doe Defendants is **DISMISSED without prejudice**, with each party bearing its own costs and attorneys' fees.

**IT IS FINALLY ORDERED** that Plaintiff's cause of action against all other Defendants is **DISMISSED with prejudice**, with each party bearing its own costs and attorneys' fees.

  
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JOHNA. ROSS  
UNITED STATES DISTRICT JUDGE

Dated this 6<sup>th</sup> day of July, 2017.